



Billing Code: 4510-27-P

DEPARTMENT OF LABOR

Wage and Hour Division

Proposed Information Collection Request (ICR) for the Worker Classification Survey; comment request

AGENCY: Wage and Hour Division, Labor

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Department is soliciting comments concerning its proposal to collect information about employment experiences and workers' knowledge of basic employment laws and rules so as to better understand employees' experience with worker misclassification. A copy of the proposed information request can be obtained by contacting the office listed below in the FOR FURTHER INFORMATION CONTACT section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before (INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER).

ADDRESSES: You may submit comments by either one of the following methods: E-mail: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier: Division of Regulations,

Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number (or other identifier) identified above for this information collection.

Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via e-mail or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Karen Livingston, Director, Division of Strategic Planning and Performance, Wage and Hour Division, 200 Constitution Avenue N.W., Frances Perkins Bldg., Room S-3510, Washington, D.C., 20210, telephone number (202) 693-0023 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION

Background: The purpose of this study is to design and administer a new survey to collect information about employment experiences and workers' knowledge of basic employment laws and rules so as to better understand employees' experience with worker misclassification. This is the first time DOL will field a survey to examine worker classification. The survey instrument utilizes and adapts existing survey questions, as well as incorporates new questions specific to this study. The data collection effort with this group will gather information about workers' employment and pay arrangements and will measure workers' knowledge about their current job classification, and their knowledge about the rights and benefits associated with their job status. Worker misclassification can be understood as the practice, intended or unintended, of

improperly treating a worker who is an employee under the applicable law as in a work status other than an employee (i.e., an independent contractor). As a result, employees are deprived of their legal wage entitlements, including minimum wage and/or overtime, as well as programs like unemployment insurance and workers' compensation, because such programs generally apply only to "employees" rather than workers in general. Federal labor laws do not require employers to inform workers of their employment status (whether the worker is an employee or not), the basis for their status determinations, or pay (including hours worked, pay rates, and wages paid). As a result, workers may not be prepared for the consequences of misclassification.

Employers who misclassify workers may achieve significant administrative and labor cost reductions, giving them a profound advantage over employers that properly classify their workers as employees. According to one estimate, if only one percent of all employees were misclassified nationally, the loss in overall unemployment insurance revenue due to underreporting would be nearly \$200 million dollars annually.¹ This may be an underestimate; some states report losing between \$5 and 20 million dollars annually on unemployment insurance payments alone.² The GAO estimates that unpaid taxes total more than \$2.7 billion dollars per year in unpaid Social Security, unemployment insurance, and income tax due to misclassification.³ A 2000 DOL commissioned study found that 10 to 30 percent of firms audited for state unemployment insurance had one or more of its employees misclassified as independent contractors.⁴ Since 2009, Wage and Hour investigators have collected over \$29

¹ GAO-09-717 and Planmatics, Inc. Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs. February 2000.

² Statement of Seth D. Harris, Deputy Secretary, U.S. DOL, before the Committee on Health, Education, Labor, and Pensions of the U.S. Senate. June 17, 2010.

³ GAO-07-859T and Upper Midwest Employment Law Institute, 2010.

⁴ GAO-09-717 and Planmatics, Inc. Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs. February 2000.

million in back wages for over 29,000 employees who were not paid in compliance with federal law because they were misclassified as independent contractors.

This survey will provide critical information to Department policymakers on whether workers have knowledge of their employment classification and whether they understand the implications of their classification status. The primary tasks of the survey include: 1) design and cognitively test survey questions to be used for worker classification survey, 2) develop sampling methodology that will generate nationally representative samples of workers (or as close to nationally representative as possible), 3) conduct in-depth interviews of employers and employer groups to explore employer knowledge, attitudes, and practices around classifying workers, and 4) execute the survey, analyze the data and report the results. The period of performance of this evaluation is 30 months ending in March 2014. The overall budget for the evaluation is \$1,852,029. The evaluation contractor is Abt Associates.

2. Desired Focus of Comments: Currently, the Department of Labor is soliciting comments concerning the above data collection. Comments are requested that:

- * Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- * Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- * Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

3. Current Actions: Pursuant to the PRA implementing regulations at 5 CFR 1320.8(d)(1), this notice requests comments on the proposed information collection request discussed above in the Background section of this notice. Interested parties are encouraged to provide comments as described in the ADDRESSES section above.

Agency: Wage and Hour Division.

Type of Review: New Collection

Title of Collection: Worker Classification Survey.

OMB Control Number: [Insert OMB Control Number].

Affected Public: Individuals or households.

For Worker Survey:

Annual hour burden:	
Screeners	
17,906 households x 5 minutes each	1,492
Extended interview	
10,060* X 15 minutes	2,515
Total Burden (10,060 respondents)	4,007
Main Survey Annualized cost to respondents: (4,007 hours at \$23.28** per hour)	\$ 93,282
200 Non-response interviews X 5 minutes each	
16.66	
Annualized cost to respondents (16 hours at \$23.28 per hour)	\$388
TOTAL ANNUALIZED Cost to Respondents:	\$93,670

*Includes sixty (60) pre-test cases.

**U.S. Department of Labor, Bureau of Labor Statistics, Table B-3. Average hourly and weekly earnings of all employees on private nonfarm payrolls by industry sector, seasonally adjusted (accessed from the following website as of January 2012: <http://www.bls.gov/webapps/legacy/cesbtab3.htm>)

In-depth Interviews:

Annual hour burden:

Recruitment (includes calls and review of materials)	
100 executives x 15 minutes each	25
In-depth interviews	
20 @ 60 minutes each	20
Total Burden (20 respondents)	45

Annualized cost to respondents: (45 hours at \$84.88* per hour) \$3,820

*U.S. Department of Labor, Bureau of Labor Statistics, Table B-3. Average hourly and weekly earnings of all employees on private nonfarm payrolls by industry sector, seasonally adjusted (accessed from the following website as of January 2012 (<http://www.bls.gov/news.release/ocwage.t01.htm>))

Comments submitted in response to this request will be summarized and/or included in the request for OMB approval; they will also become a matter of public record.

SIGNED: at Washington, D.C. this 8th day of January, 2012.

Mary Ziegler

Director, Division of Regulations, Legislation, and Interpretations,

Wage and Hour Division,

U.S. Department of Labor

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